

אי הכי ארבעה שלשה הווי – If so; why four, there are only three

Overview

There is a dispute how to interpret the phrase לא לזה ולא לזה in the ברייתא (where the ruling is ח"נ על שו"ר and ח"נ for קרן). According to שמואל it means that only the ניזק had permission to be there (this סיפא follows the ruling of the רבנן [not ר"ט]). However רבינא maintains that the סיפא (follows the view of ר"ט and) is discussing a case where it was לא לזה ולא לזה לשוורים¹ (פירות דחד). The גמרא asks that according to רבינא there are only three cases in the ברייתא; not four. תוספות will explain why this question is only on שמואל² and not on רבינא.

בשלמא לשמואל דמוקי רישא רבי טרפון וסיפא רבנן –

It is fitting according to שמואל, who establishes the רישא of the ברייתא according to ר"ט and the סיפא according to the רבנן; it is therefore fitting to mention in the ברייתא all four cases, for -

אצטריך סיפא לאשמועין לאפוקי מדברי טרפון –

The סיפא (of לא לזה ולא לזה³) is necessary to teach us an alternate view; to exclude from the view of ר"ט⁴; that is why there is no difficulty according to שמואל. אלא לרבינא לא צריכא כלל –

However according to רבינא who maintains that the entire ברייתא follows the opinion of ר"ט, the fourth case was not at all necessary -

דלגבי שן הוי חצר הניזק שמעינן מכל שהוא רשות לניזק –

חצר (רשות לפירות ניזק) where only the ניזק has חצר (רשות לפירות ניזק) that it is a חצר (רשות לפירות ניזק) we know that from the first case in the ברייתא (and the ניזק pays a ש"ש) where it states that כל שהוא רשות לניזק' ולא למזיק⁵ he is בכל -

וקרן ברשות הרבים שמעינן מחצר השותפין והבקעה:

And concerning קרן (where both שוורים have no permission to be in the חצר⁶), that it is considered as if he damaged him in the ר"ר⁷ (and pays only ח"נ), this we know from the third case of השותפין והבקעה where it states that a ח"נ pays a ח"נ. Therefore the גמרא asks that there are only three cases, not four.

¹ See previous ד"ה לא תוספות.

² Seemingly the ברייתא is even more difficult according to שמואל; for in שמואל's interpretation, the last case (לא לזה ולא לזה) is the exact duplicate of the first case (כל שהוא רשות לניזק ולא למזיק). However, according to רבינא, the last case is different from the previous three cases (for neither have לשוורים and only the ניזק has לפירות).

³ According to שמואל this is referring where only the ניזק had permission to be there, and not the מזיק.

⁴ The ברייתא is stating that there are four rules; (the middle) two according to everyone the first according to ר"ט and the last according to the רבנן. Rule # 1 and # 4 are discussing the same case; # 1 is according to ר"ט, and # 4 according to the רבנן.

⁵ The fact that the ניזק has no רשות לשוורים in the חצר does not diminish its status as a אחר.

⁶ See 'Thinking it over'.

⁷ See previous ד"ה לא תוספות footnote # 2.

Summary

It is necessary to cite the fourth case according to שמואל to reject the opinion of ר"ט; however (according to רבינא) the rules of the fourth case can be derived from the previous cases.

Thinking it over

(רבינא claims that we can derive the fourth case (according to רבינא) concerning קרן from the (third) case of חצר השותפין⁸. Seemingly they are not the same.⁹ תוספות taught us that the case of רבינא is in a situation where לא לזה ולא לזה לשוורים; how is that similar to a חצר השותפין והבקעה, where both have קרן ברה"ר because they both have רשות, however by לא לזה ולא לזה where neither have רשות it is not considered ברה"ר?!¹⁰

⁸ See footnote # 6.

⁹ According to our גירסא (the גירסא of רש"י) that we are discussing לזה ולזה לשוורים, the question is readily understood; however it is difficult according to גירסת תוספות.

¹⁰ See מהרש"א בתוס' ד"ה מי, חידושי ר"נ אות תקיא, נח"מ, סוכ"ד, כו'.